

EXHIBIT D

**Excerpts from the June 19, 2020 deposition of
Oracle's expert, Barbara Frederiksen-Cross**

PUBLIC REDACTED VERSION

In The Matter Of:

Oracle v.

Rimini Street

Barbara Frederiksen-Cross

June 19, 2020

HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER



Min-U-Script® with Word Index

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2	DISTRICT OF NEVADA	
3		
4	ORACLE USA, INC., et al.,	APPEARANCES
5	Plaintiffs,	(All appearances remotely via Zoom)
6	vs. Case No.: 2:10-cv-00106-LRH-VCF	
7	RIMINI STREET, INC., et al.,	Appearing as counsel on behalf of Plaintiffs:
8	Defendants.	MORGAN, LEWIS & BOCKIUS, LLP BY: JOHN POLITO, ESQ. LINDSEY SHINN, ESQ. One Market, Spear Street Tower San Francisco, CA 94105 (415) 442-1000 john.polito@morganlewis.com lindsey.shinn@morganlewis.com
9	-----/	
10		BY: JACOB J.O. MINNE, ESQ. 1400 Page Mill Road Palo Alto, CA 94304 (650) 843-7280 jacob.minne@morganlewis.com
11	* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER *	
12	REMOTELY CONDUCTED VIDEOTAPED	Appearing as counsel on behalf of Defendants:
13	EXPERT WITNESS DEPOSITION OF	GIBSON, DUNN & CRUTCHER, LLP
14	BARBARA FREDERIKSEN-CROSS	BY: ERIC D. VANDEVELDE, ESQ. 333 South Grand Avenue Los Angeles, CA 90071 (213) 229-7000 evandevelde@gibsondunn.com
15	Wilsonville, Oregon	
16	(Witness's location)	BY: CASEY J. McCracken, ESQ. CHRIS WHITTAKER, ESQ. 3161 Michelson Drive Irvine, CA 92612 (949) 451-3800 cmccracken@gibsondunn.com cwhittaker@gibsondunn.com
17	Friday, June 19, 2020	
18		Also present:
19		John P. Reilly, Rimini in-house Counsel Lisa Debrosse Johnson, Rimini in-house Counsel Jim Maroulis, Oracle in-house Counsel Aydaline Garcia, Zoom host Juan Torres, documents technician
20		
21	Stenographically reported by: LORRIE L. MARCHANT, RMR, CRR, CCRR, CRC California CSR No. 10523 Washington CSR No. 3318 Oregon CSR No. 19-0458 Texas CSR No. 11318	
22		
23		
24		
25	Job No.: 2020-86014	---oo---
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10		---oo---
11		
12	BE IT REMEMBERED that on Friday, June 19,	INDEX OF EXHIBITS MARKED FOR IDENTIFICATION
13	2020, commencing at the hour of 8:58 a.m. PDT,	
14	thereof, at the offices of Wilsonville, Oregon	EXHIBIT DESCRIPTION PAGE
15	(witness's location), before me, LORRIE L. MARCHANT,	Exhibit 1854 Corrected Post-Injunction Expert Report of Barbara Ann Frederiksen-Cross 17
16	CSR, RMR, CRR, CCRR, CRC, a Certified Stenographic	
17	Shorthand Reporter for the State of California,	Exhibit 1855 Corrected Post-Injunction Surrebuttal Expert Report of Barbara Ann Frederiksen-Cross 18
18	personally appeared	Exhibit 1856 Rebuttal Expert Report of Professor Owen Astrachan, dated March 13, 2020 29
19	BARBARA FREDERIKSEN-CROSS,	Exhibit 1857 Document produced in native format, RSI006953646 71
20	called as a witness by the Defendant herein, who,	Exhibit 1858 Diagram 96
21	being by me first duly sworn/affirmed, was thereupon	Exhibit 1859 Diagram 120
22	examined and testified as hereinafter set forth.	Exhibit 1860 Diagram 135
23	---oo---	Exhibit 1861 Diagram 142
24		Exhibit 1862 Diagram 185
25		Exhibit 1863 PDF version of spreadsheet 189
		Exhibit 1864 Oracle USA vs. Rimini Street, Inc., Opinion 247
		---oo---

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<p>1 FRIDAY, JUNE 20, 2020 2 WILSONVILLE, OREGON 3 (Witness's location) 4 8:58 a.m. PDT 5 THE VIDEOGRAPHER: We are going on the 6 record on June 19th, 2020, at approximately 7 8:58 a.m. Pacific Time. My name is Aydaline Garcia. 8 I'll be the tech monitor on today's deposition. And 9 Juan Torres will be the document tech.</p> <p>10 Will the court reporter please swear in the 11 witness.</p> <p>12 THE STENOGRAPHER: Okay. Before I swear in 13 the witness, I will ask Counsel to stipulate on the 14 record that due to the current National Emergency 15 pandemic, the stenographer may swear in the deponent 16 even though she is not in the physical presence of 17 the deponent, and that there is no objection to that 18 at this time, nor will there be an objection to it 19 at a future date.</p> <p>20 MR. VANDEVELDE: No objection.</p> <p>21 MR. POLITICO: No objection.</p> <p>22 BARBARA FREDERIKSEN-CROSS, 23 FIRST DULY SWORN/AFFIRMED, TESTIFIED AS FOLLOWS: 24 EXAMINATION BY MR. VANDEVELDE 25 MR. VANDEVELDE: All right. And sorry.</p>	<p>1 A. I think I had one telephonic deposition 2 once, but ... 3 Q. Got it. 4 And you're in a hotel room. I'm in my 5 office. Counsel is in their offices and homes. 6 We're not all in the same room. The court reporter 7 and videographer that are all attending this 8 proceeding, and it's being transcribed as if it were 9 in person.</p> <p>10 You are on video, and I understand the 11 videographer is recording video of you along 12 throughout the proceeding while we're on the record. 13 You may see others on the video screen, but they are 14 not being recorded, including myself and your 15 counsel, Mr. Polito.</p> <p>16 If at any time you experience technical 17 difficulties, will you let me know?</p> <p>18 A. Yes. And if it's a sound issue and I'm not 19 sure you can hear me, I will wave my hands 20 frantically or something just to signal that we have 21 an issue.</p> <p>22 Just as a housekeeping matter, can I get 23 the phone number -- maybe somebody could put it in 24 the text box for the folks who are hosting this 25 video in case I need to reach out to their tech</p>
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<p>1 Did we say we'll do appearances later; you'll have 2 them -- insert them later?</p> <p>3 THE STENOGRAPHER: I can do that.</p> <p>4 MR. VANDEVELDE: Okay. Great.</p> <p>5 BY MR. VANDEVELDE:</p> <p>6 Q. Good morning, Ms. Frederiksen-Cross.</p> <p>7 A. Good morning.</p> <p>8 Q. Do you understand that you're under oath 9 and testifying under penalty of perjury today?</p> <p>10 A. I do.</p> <p>11 Q. Is there any reason that you cannot give 12 truthful and accurate testimony?</p> <p>13 A. No.</p> <p>14 Q. Do you live still in Hubbard, Oregon?</p> <p>15 A. That is correct, yes.</p> <p>16 Q. Okay. And where are you physically located 17 right now?</p> <p>18 A. I'm currently in a hotel meeting room in 19 Wilsonville, Oregon.</p> <p>20 Q. Okay. So we're obviously doing this 21 remotely.</p> <p>22 Have you ever given a deposition remotely 23 before?</p> <p>24 A. Not by video, no.</p> <p>25 Q. Okay.</p>	<p>1 support.</p> <p>2 Q. Sure. If someone from Lexitas could have 3 the number inserted into the chat, that would be 4 great.</p> <p>5 FEMALE SPEAKER: I will mention that your 6 computer is having, like, a glitch on your end. So 7 I'm not sure if -- how you're connected in the 8 conference room.</p> <p>9 THE WITNESS: Is that mine or --</p> <p>10 MR. VANDEVELDE: I can hear her and see her 11 fairly well. Why don't we -- why don't we keep 12 going, and we'll see -- we'll see how it progresses.</p> <p>13 BY MR. VANDEVELDE:</p> <p>14 Q. Ms. Frederiksen-Cross, at times I'm going 15 to show you exhibits, but we'll have to do that 16 electronically. And we can kind of work that out as 17 we get to our first exhibit.</p> <p>18 Do you have any physical papers or 19 materials with you that relate to the case?</p> <p>20 A. Yes, sir, I do.</p> <p>21 Q. Okay. And what are they?</p> <p>22 A. I have a binder that contains my corrected 23 expert report, the supplement report, and my 24 declaration from this matter. And I have, as loose 25 paper, the injunction and then the Ninth Circuit's</p>

1 BY MR. VANDEVELDE: 2 Q. Did you also consider whether it needs to 3 be in a concrete or permanent form? 4 MR. POLITICO: Same objections. 5 THE WITNESS: I do not recall applying a 6 test of permanent form, but rather fixed a 7 intangible form or recorded in a concrete form. 8 BY MR. VANDEVELDE: 9 Q. How do you define the phrase "substantially 10 incorporate protected material" as you applied it in 11 your report? 12 MR. POLITICO: Objection. It misstates 13 testimony. Calls for a legal conclusion. 14 THE WITNESS: Well, for example -- and I 15 don't think you want me to walk through every 16 example in the report, but -- 17 BY MR. VANDEVELDE: 18 Q. You lost your audio. 19 A. Oh, I'll try to speak up. Do you have me 20 now? Hello. 21 Q. Oh, there you are. Now I can hear you. 22 A. So, for example, a modification to an 23 Oracle PeopleSoft environment, that -- the resultant 24 derivative for that environment is modified still 25 substantially incorporates protected material from	Page 33 1 file because it's compressed in the encoding of the 2 zip. 3 And so any -- any comparable encoding, for 4 instance, embedding the lines of a file in XML or, 5 you know, changing -- changing the format of the 6 file in a way, that it can easily be changed back 7 via translation or via subsequent processing, I 8 think would still substantially incorporate the 9 protected material even if they weren't visible on 10 their face when you open two files and look at them 11 side by side. 12 BY MR. VANDEVELDE: 13 Q. Let's look at paragraph 210 of your opening 14 report, which is 1854. 15 MR. VANDEVELDE: If the document technician 16 can scroll down to paragraph 2 -- oh, no. Sorry. 17 Different document. 1854. 18 BY MR. VANDEVELDE: 19 Q. In that paragraph, in the second bullet 20 point you state: 21 "Rimini's updates are derivative 22 works because they extend the features 23 and functionality of the existing 24 PeopleSoft software, rely for their 25 operation on the underlying PeopleSoft
Page 34 1 Oracle's original PeopleSoft environment. 2 Similarly, a program that is a modified 3 version of an Oracle program would substantially 4 incorporate Oracle materials. And, likewise, a 5 document, for instance, that contains excerpts of 6 Oracle code or screenshots of the Oracle materials, 7 whether they were in text form or in screenshot 8 form, would be substantially incorporating those 9 protected materials to the extent they appear in the 10 document. 11 Q. You gave the example of a translation with 12 respect to you would -- you suggested that a 13 translation would not contain any literal copying of 14 the preexisting work. 15 Are there any other examples you can think 16 of where there's no literal copying, but it still 17 substantially incorporates? 18 MR. POLITICO: Objection. Overbroad. Calls 19 for a legal conclusion. Outside the scope. 20 THE WITNESS: Well, I guess, you know, 21 there's -- if you're looking at incorporates from 22 the technical standpoint, for instance, even an act, 23 like, zipping a file changes its representation such 24 that if you open a zip file, you don't -- you 25 wouldn't see the underlying work that was in the zip	Page 34 1 architectural framework, and do not 2 operate independently from the PeopleSoft 3 components on which they rely." 4 Do you contend that that is the legal 5 definition of "derivative work" under the Copyright 6 Act? 7 MR. POLITICO: Objection. Calls for a legal 8 conclusion. 9 THE WITNESS: With respect to a 10 transformation or extension that's fixed in a 11 tangible form, yes. 12 BY MR. VANDEVELDE: 13 Q. Was that your expert opinion, or is this 14 your understanding from counsel? 15 MR. POLITICO: Objection. Calls for a legal 16 conclusion. 17 THE WITNESS: I'm stating my opinion here, 18 and it's based on the guidance I was given of 19 copyright law by counsel. 20 BY MR. VANDEVELDE: 21 Q. So your bullet point 2 you're contending is 22 your expert opinion? 23 MR. POLITICO: Objection. Calls for a legal 24 conclusion. Vague. 25 THE WITNESS: I am not an attorney. So I

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<p>1 am using the "derivative work" here in the sense 2 that a technical person would use that in the 3 context of the understanding I've been given of the 4 law.</p> <p>5 I certainly don't intend to offer any legal 6 opinions, Counsel, just to be clear. But as a 7 technical person, it is my opinion that those 8 updates are derivative works or derived from the 9 PeopleSoft software which they rely upon and which 10 they extend or modify.</p> <p>11 BY MR. VANDEVELDE:</p> <p>12 Q. Okay. So this -- just so I'm understanding 13 you, this is not an understanding you obtained from 14 Oracle counsel?</p> <p>15 MR. POLITICO: Objection. Vague.</p> <p>16 THE WITNESS: This is my opinion based on 17 my understanding of the law as provided by counsel.</p> <p>18 BY MR. VANDEVELDE:</p> <p>19 Q. Is this definition something you applied in 20 your analysis throughout your work in this case in 21 evaluating whether something is a derivative work?</p> <p>22 MR. POLITICO: Objection. Misstates the 23 document.</p> <p>24 THE WITNESS: In some parts I did. I mean, 25 there was some cases where I'm opining on -- on</p>	<p>1 evaluate the evidence?</p> <p>2 MR. POLITICO: Objection. Misstates prior 3 testimony. Object to the extent it calls for a 4 legal conclusion. Asked and answered.</p> <p>5 THE WITNESS: I would say, Counsel, these 6 are principal points within the criteria I used. I 7 think in my report I elaborate somewhat on my 8 findings with respect to these, and it may be 9 clearer as -- if we go to individual sections where 10 I'm discussing a particular derivative work and my 11 reasoning for finding it so.</p> <p>12 BY MR. VANDEVELDE:</p> <p>13 Q. Do you -- you agree that PeopleSoft relies 14 on an operating system for its own operation?</p> <p>15 MR. POLITICO: Objection. Incomplete 16 hypothetical. Vague. Object to the extent it calls 17 for a legal conclusion.</p> <p>18 THE WITNESS: The versions of PeopleSoft I 19 am aware of all run in environments which also have 20 an operating system. It's not always the same 21 operating system. But the PeopleSoft software, at 22 least the offerings from Oracle that I am aware of, 23 run on platforms that do themselves have an 24 operating system.</p> <p>25 ///</p>
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<p>1 derivative work that falls within this bullet. But 2 there are also other cases where I am looking at 3 examples of derivative work, for instance, the 4 modified and extension of a PeopleSoft environment 5 that's captured in the first bullet or the 6 application of changes to an existing environment as 7 is captured in the third.</p> <p>8 So I think it's -- it's not fair to divorce 9 this one bullet from the paragraph in saying what I 10 did for the entirety of my analysis.</p> <p>11 BY MR. VANDEVELDE:</p> <p>12 Q. Okay. But -- but in your analysis -- I 13 guess take all three bullets.</p> <p>14 These are the criteria that you used to 15 evaluate whether something was a derivative work?</p> <p>16 MR. POLITICO: Objection. Misstates prior 17 testimony. Asked and answered.</p> <p>18 THE WITNESS: Well, I used these criteria 19 in combination with my review of the evidence to see 20 what the specific evidence held with respect to 21 these different bullet points.</p> <p>22 BY MR. VANDEVELDE:</p> <p>23 Q. Well, I mean, of course, you have to look 24 at the evidence. I get that.</p> <p>25 But these are the criteria you used to</p>	<p>1 BY MR. VANDEVELDE:</p> <p>2 Q. Are you aware of a version of PeopleSoft 3 that can run without an operating system?</p> <p>4 MR. POLITICO: Objection. Vague.</p> <p>5 THE WITNESS: I think we covered that in my 6 earlier deposition, Counsel. I am not aware of any 7 specific version of PeopleSoft that runs without an 8 operating system.</p> <p>9 BY MR. VANDEVELDE:</p> <p>10 Q. Does PeopleSoft -- can it operate 11 independently from an operating system? Maybe 12 that's the same way of asking the same question, but 13 I'll ask it that way just to make clear.</p> <p>14 Can PeopleSoft operate completely 15 independently from an operating system?</p> <p>16 MR. POLITICO: Objection. Vague.</p> <p>17 THE WITNESS: Again, for the offerings that 18 I am aware of, the ones that I've looked at in the 19 context of this case, it does not operate 20 independently without an operating system.</p> <p>21 BY MR. VANDEVELDE:</p> <p>22 Q. Does PeopleSoft enable a functionality that 23 an operating system does not?</p> <p>24 MR. POLITICO: Objection. Vague. Exceeds 25 the scope.</p>

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7 BY MR. VANDEVELDE:

8 Q. Got it.

9 MR. VANDEVELDE: If you could take down the
10 document, please.

11 BY MR. VANDEVELDE:

12 Q. Your report discusses alleged
13 distributions.

14 How do you define that term as you use it
15 in your report?

16 A. Do you want to direct me to a particular
17 paragraph where I've used that, Counsel?

18 Q. I don't have one handy, but you used the
19 word "distributions" a number of times.

20 How do you think of distributions in your
21 analysis?

22 A. Well, a distribution, for instance, in the
23 context of a PeopleSoft update, is the transfer,
24 whether electronically or otherwise, of the
25 specifics of that update from where it was created

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1 A. I believe that it is. But I'm not a
2 lawyer, Counsel. I'm using the term "distribution"
3 in a more common, technical meaning of distributing
4 something from Point A to Point B.

5 Q. Did Oracle counsel give you any definition
6 for the word "distribution" to apply to your
7 analysis?

8 A. Not that I recall, Counsel.

9 Q. Does a distribution, as you use it in your
10 analysis, require a change of ownership?

11 MR. POLITO: Object to the extent it calls
12 for a legal conclusion.

13 THE WITNESS: My understanding -- and,
14 again, this is a lay person's understanding, not a
15 legal understanding -- is that in order to
16 distribute something, like a piece of software, it
17 can be a distribution of a copy of that software,
18 for instance.

19 Because typically with software, unless
20 it's on a physical media, the possession -- set
21 aside ownership for a minute because that's a
22 slippery slope, but the possession of the program
23 isn't tied to a single physical tangible device.
24 You can have multiple electronic copies, and you
25 could be distributing a copy to someone else who

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1 on one customer's machine.

2 (Witness's video and audio freezes.)

3 MR. VANDEVELDE: Can we go off the record,
4 please.

5 THE VIDEOGRAPHER: The time is 10:55 p.m.
6 We are going off the record.

7 (Recess taken, from 10:55 to 11:04.)

8 THE VIDEOGRAPHER: The time is 11:04. We
9 are back on the record.

10 BY MR. VANDEVELDE:

11 Q. Ms. Frederiksen-Cross, do you understand
12 you're still under oath?

13 A. I do, Counsel.

14 Q. Do you understand that the term
15 "definition" [sic] is a legal term under the
16 Copyright Act?

17 MR. POLITO: Objection. The term --

18 BY MR. VANDEVELDE:

19 Q. Distribution. Distribution.

20 MR. POLITO: Objection. Misstates the
21 document. Or misstates the law, I should say.

22 BY MR. VANDEVELDE:

23 Q. I'm just asking if you understand that the
24 term definition -- "distribution" is in the
25 Copyright Act.

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1 then has possession of that copy.

2 Now, whether they own it or not, that's a
3 whole 'nother kettle of fish because I don't even
4 know how ownership intersects with this.

5 BY MR. VANDEVELDE:

6 Q. Okay. So when you use the word
7 "distribution" in your report, it was not a
8 definition that had an element of a change of
9 ownership; correct?

10 MR. POLITO: Objection. Vague. Misstates
11 testimony.

12 THE WITNESS: I think that is generally,
13 correct. If I come across an example where I am
14 using it in the context of ownership, I'll point
15 that out, but with --

16 BY MR. VANDEVELDE:

17 Q. Okay. So, for example, if Company A copies
18 a file from one of its computers to another of its
19 computers, would you call that a distribution as you
20 use it in your report?

21 MR. POLITO: Objection. Incomplete
22 hypothetical.

23 THE WITNESS: Assuming that they're
24 separate machines or separate environments, I might
25 say that that code was distributed to another

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<p>1 scenario that has violated the injunction. 2 BY MR. VANDEVELDE: 3 Q. Let's assume we're using JDE instead of 4 PeopleSoft. JDE, there's no facilities, 5 restrictions on licensees. There's no injunction 6 paragraph about restricting it away from Rimini 7 computers -- sorry, there's no injunction provision 8 about the licensee only having it on their own 9 computer system. So let's say this is JDE. 10 Same answer? 11 MR. POLITICO: Objection. Vague. Compound. 12 Incomplete hypothetical. Object to the extent it 13 calls for a legal conclusion. 14 THE WITNESS: What I read in the injunction 15 with respect to JDE -- and this is specifically 16 paragraph 8. The original injunction was: 17 "Rimini Street shall not copy or 18 access J.D. Edwards' software or source 19 code to carry out development and testing 20 of software updates." 21 Now, I realize that the court dropped the 22 access provision, but they left the copy provision 23 in. So JDE is a little bit different scenario. 24 For the Rimini engineer to open that file 25 so he can insert his line, whether he does it at</p>	<p>1 Are you with me? 2 A. I think so, yes. 3 Q. Okay. Putting aside the display adapter 4 memory issues -- and that will be true in all these 5 hypotheticals, because we'll deal with that later. 6 Putting aside those issues, do you contend 7 that it would be a violation of the injunction for 8 the Rimini engineer to remotely connect to 9 Client B's environment and make the same change he 10 made for Client A? 11 MR. POLITICO: Objection. Incomplete 12 hypothetical. Vague. Compound. Object to the 13 extent it calls for a legal conclusion. 14 THE WITNESS: Well, again, when you say 15 that the Rimini engineer is connecting to Client B's 16 system, I have the same problem with it that I had 17 in the original hypothetical, that -- 18 BY MR. VANDEVELDE: 19 Q. And I told you to assume -- we'll deal with 20 the display adapter later. The only copies are the 21 RAM copies on the client's systems. 22 A. So let's modify that hypothetical to 23 encompass that. 24 Q. I've already instructed you assume that the 25 display adapter memory is not an issue.</p>
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<p>1 Client A's systems or from somewhere else, that 2 Rimini engineer is creating a copy of the software 3 at the time he's engaging in that edit process. And 4 a copy, again, when he stores it back with the edit 5 effected, a more permanent copy. 6 And so under my understanding of the 7 injunction, that would not be allowed by that 8 specific paragraph 8. 9 BY MR. VANDEVELDE: 10 Q. Okay. Let's assume now -- let's go back to 11 PeopleSoft, and let's assume that Rimini has made 12 this change in Client A's environment. They have 13 fixed the problem. 14 Understand? 15 A. I understand. 16 Q. Now, assume that six months later, Client B 17 hires Rimini for support. 18 A. Okay. 19 Q. And Client B has a license to the same 20 PeopleSoft software. It's licensed. Third-party 21 support is allowed. And Client B is hosting its own 22 development environment on its own systems. And 23 Client B is experiencing the very same bug that 24 Client A was experiencing in the exact same Oracle 25 file.</p>	<p>1 MR. POLITICO: Same objections. 2 THE WITNESS: Okay. So give me the pieces, 3 again, so we have a clear record. 4 BY MR. VANDEVELDE: 5 Q. Client B has hired Rimini six months later. 6 Rimini has already fixed the bug or the issue for 7 Client A. Client B has a license to the same 8 PeopleSoft software. They have their own 9 development environment on their own systems. 10 They're experiencing the very same bug that Client A 11 was experiencing in the exact same Oracle file. 12 Do you contend it would violate the 13 injunction for the Rimini engineer to log in to, 14 remotely, Client B's environment and make the same 15 change that he had previously made for Client A? 16 MR. POLITICO: Incomplete hypothetical. 17 Vague. Compound. Calls for a legal conclusion. 18 THE WITNESS: And in your hypothetical, 19 Counsel, setting aside for the moment the issue of 20 RAM, which I want to be careful to keep repeating 21 that, because I've already expressed that I think 22 that is an issue, your hypothetical seems to ignore 23 all of the testing and research and all of the rest 24 of the -- the work that would have happened on 25 Client A's system to develop that update, even if</p>

<p style="text-align: right;">Page 117</p> <p>1 it's a one-line update.</p> <p>2 You have to find what problem has the --</p> <p>3 what program has the problem, where that problem is.</p> <p>4 You have to create your update, which maybe you do</p> <p>5 sitting back at your desk. But then you have to</p> <p>6 apply it on customer's machine and test it to know</p> <p>7 that you fixed the problem.</p> <p>8 So to the extent that the Rimini engineer</p> <p>9 is now going to Customer B and providing that</p> <p>10 one-line change, he is doing so informed by the work</p> <p>11 that was performed leading up to identifying and</p> <p>12 writing that one line on Customer A's machine. And</p> <p>13 then successfully following the insertion of that</p> <p>14 line, the testing and all of the rest of it.</p> <p>15 So I think in that scenario, providing that</p> <p>16 same fix to Customer B, by just taking what you</p> <p>17 already had and going to Customer B and say, Here, I</p> <p>18 know this fixes the problem, I do understand that to</p> <p>19 be prohibited under the injunction.</p> <p>20 BY MR. VANDEVELDE:</p> <p>21 Q. Does it matter how much or little</p> <p>22 efficiency is gained? For example, let's say it</p> <p>23 takes the engineer 50 hours of work to diagnose the</p> <p>24 issue, figure out where the problem was, that it was</p> <p>25 in this file that we see in the diagram. To come up</p>	<p style="text-align: right;">Page 119</p> <p>1 hypothetical.</p> <p>2 THE WITNESS: Not in the hypothetical as</p> <p>3 you have posed it, Counsel. I wouldn't think that</p> <p>4 that would make a difference. Because Customer B is</p> <p>5 still gaining the benefit of the development time</p> <p>6 and the testing time that occurred on Customer A's</p> <p>7 environment. And that fix is now being reused on a</p> <p>8 new customer's system.</p> <p>9 BY MR. VANDEVELDE:</p> <p>10 Q. Does it matter whether it's one line of</p> <p>11 Rimini-written code or ten lines of Rimini-written</p> <p>12 code?</p> <p>13 MR. POLITO: Objection. Incomplete</p> <p>14 hypothetical.</p> <p>15 THE WITNESS: In terms of taking that</p> <p>16 update and replicating the derivative work both with</p> <p>17 respect to the file and with respect to the</p> <p>18 environment that was created on Customer A's machine</p> <p>19 in a new customer's environment, I do not think that</p> <p>20 the number of lines is relevant there.</p> <p>21 MR. VANDEVELDE: Got it.</p> <p>22 If we could show -- if we could mark Tab 10</p> <p>23 and display it to the witness, I would appreciate</p> <p>24 it.</p> <p>25 DOCUMENT TECHNICIAN: And, Counsel, I'll</p>
<p style="text-align: right;">Page 118</p> <p>1 with the Rimini-written line of code, it takes 50</p> <p>2 hours. And then in Client B, it takes 10 minutes.</p> <p>3 Is that relevant or irrelevant to your</p> <p>4 analysis?</p> <p>5 MR. POLITO: Objection. Vague. Incomplete</p> <p>6 hypothetical.</p> <p>7 THE WITNESS: It is not relevant to my</p> <p>8 analysis of whether that act would be prohibited.</p> <p>9 Because it appears that the second customer is</p> <p>10 gaining the benefit of work that was done on the</p> <p>11 first customer's environment.</p> <p>12 It might be relevant to other</p> <p>13 determinations, for instance, relating maybe to the</p> <p>14 damages person or something, but it's not related to</p> <p>15 the determination of whether that act of -- of using</p> <p>16 the benefit of the knowledge gained on Client A's</p> <p>17 system when you develop that update, then applying</p> <p>18 that for the benefit of the another customer when</p> <p>19 you apply that update elsewhere. That doesn't seem</p> <p>20 to be diluted in any way here.</p> <p>21 BY MR. VANDEVELDE:</p> <p>22 Q. Does it matter whether it's the same</p> <p>23 engineer that did the work for Client A that does</p> <p>24 the work for Client B or it's a different engineer?</p> <p>25 MR. POLITO: Objection. Incomplete</p>	<p style="text-align: right;">Page 120</p> <p>1 send it through. There it is, I think.</p> <p>2 BY MR. VANDEVELDE:</p> <p>3 Q. So assume -- here's another diagram to aid</p> <p>4 in the questions I'll ask about a hypothetical.</p> <p>5 So in this hypothetical, assume the</p> <p>6 following: Client A and Client B each have a</p> <p>7 license to PeopleSoft. Each hosts its own</p> <p>8 development environment on its own systems. Each</p> <p>9 has the same Oracle file. Again, red lines are</p> <p>10 Oracle code in that file. The Rimini engineer has</p> <p>11 already remotely connected to Client A's environment</p> <p>12 and made an update by adding a line of</p> <p>13 Rimini-written code. And that's the blue line.</p> <p>14 It's 100 percent Rimini-written. It's not like any</p> <p>15 Oracle code.</p> <p>16 Again, are the derivative works so far the</p> <p>17 modified file in Client A's systems and the modified</p> <p>18 environment as a whole on Client A's systems?</p> <p>19 MR. POLITO: Before any objections, I don't</p> <p>20 have an exhibit number for this one.</p> <p>21 MR. VANDEVELDE: Oh, sorry. I forgot to</p> <p>22 mark it. It's 1859, I think.</p> <p>23 (Marked for identification purposes,</p> <p>24 Exhibit 1859.)</p> <p>25 MR. POLITO: Thank you.</p>

<p style="text-align: right;">Page 125</p> <p>1 wherever that code was run and expanded. 2 Q. Yeah. So if that blue line was a pound 3 include and it was run, to the extent there's a copy 4 made, it would be on Client A's systems; right? 5 MR. POLITICO: Objection. Form. 6 THE WITNESS: The -- sorry. Go ahead. 7 MR. POLITICO: Objection. Vague. Thank you. 8 THE WITNESS: The copy would be made on 9 Client A's systems, but I think your question was 10 was this a derivative work. And if the lines of 11 code that Rimini supplied are invoking or pulling 12 into memory that Oracle code, it colors the degree 13 to which that line of Rimini code is or is not 14 derived from Oracle code. 15 BY MR. VANDEVELDE: 16 Q. So the inclusion of pound includes in those 17 Rimini lines, does that make it a derivative work, 18 in your opinion? 19 A. Again, it -- 20 MR. POLITICO: Objection. Pardon me. 21 Objection. Incomplete hypothetical. Object to the 22 extent it calls for a legal conclusion. 23 THE WITNESS: Yeah, it may well. And 24 that's an area that -- I mean, it's a difficult case 25 to evaluate in some senses because it -- I would</p>	<p style="text-align: right;">Page 127</p> <p>1 Oracle IP. That comparison would have to be made; 2 correct? 3 MR. POLITICO: Objection. Objection. Asked 4 and answered. Misstates testimony. Calls for a 5 legal conclusion. Compound. 6 THE WITNESS: Yeah. In the case of, for 7 instance, includes of SQC code, I don't think that 8 it would be necessary to look at the SQC rather than 9 to verify that it was the Oracle SQC. 10 So from the standpoint of when you say 11 comparison, there would be additional analysis 12 required. But whether that analysis was technically 13 a comparison or some other type of determination to 14 understand how this code was or was not coupled to 15 the Oracle product. 16 BY MR. VANDEVELDE: 17 Q. But that analysis would involve some 18 evaluation or some comparison or analysis of what 19 Oracle's code and other intellectual property is; 20 correct? 21 MR. POLITICO: Objection. Vague. Compound. 22 Calls for a legal conclusion. 23 THE WITNESS: I don't mean to be humorous 24 here, but what do you mean by "what Oracle's code 25 is"? You mean the totality of its function and its</p>
<p style="text-align: right;">Page 126</p> <p>1 want to look at the totality of your hypothetical 50 2 lines of code and see how much Oracle functionality 3 that code embodied vis-a-vis things like include 4 statements where, as you say, you know, if that code 5 was written by a Rimini but was a copy of an Oracle 6 table, maybe just adding a prefix to each name, so 7 it wasn't an identical table, it might be written 8 entirely by Rimini, but derived entirely from 9 Oracle. 10 So it's difficult to separate in a vague 11 hypothetical the kind of distinctions that you are 12 making. There's not an absolute black and white, 13 that all code Rimini authors isn't a derivative 14 work, nor is there -- 15 (Stenographer clarification.) 16 THE WITNESS: -- is not a derivative work, 17 nor is there a hard ruler that says all code Rimini 18 writes is a derivative work, of course. You know. 19 It's a situational case-by-case evaluation that I 20 think you would need to make. 21 BY MR. VANDEVELDE: 22 Q. And in going back to earlier questions, you 23 would have to do some comparison, whether in your 24 brain, as I think so you mentioned, or by actually 25 doing a comparison against Oracle code or other</p>	<p style="text-align: right;">Page 128</p> <p>1 expression? Are you talking only of its expression, 2 only of its function, or some combination of both 3 that is less than the totality of either? 4 BY MR. VANDEVELDE: 5 Q. When you're evaluating whether this Rimini 6 line of code or lines of code is a derivative work, 7 you have to also in some form, whether in your brain 8 or another form, think about what the preexisting 9 work is, the copyrighted work; correct? 10 MR. POLITICO: Objection to the extent it 11 calls for a legal conclusion. Vague. Incomplete 12 hypothetical. 13 THE WITNESS: It is my understanding that 14 you would want to consider the original work in 15 determining if something was a derivation. 16 BY MR. VANDEVELDE: 17 Q. That's what I'm asking. 18 Is that correct? 19 A. And I'm agreeing. I'm saying that that is 20 my understanding, yes. 21 Q. Okay. Looking back at this diagram, I 22 think you answered that -- let me just confirm 23 because it's a different diagram than the first one. 24 I would assume you would contend that if 25 that Rimini line of code -- again, assuming that</p>

<p style="text-align: right;">Page 129</p> <p>1 it's 100 percent Rimini-written. It is not anything 2 like, let alone identical, to Oracle code. 3 If that blue line is added to Client B's 4 systems, you would say that that's cross-use and a 5 violation of the injunction? 6 MR. POLITICO: Objection. Asked and 7 answered. Incomplete hypothetical. 8 THE WITNESS: If that line of code were 9 provided to Client B as an update that was developed 10 on Client A's system, that would be a violation of 11 the injunction.</p> <p>12 BY MR. VANDEVELDE:</p> <p>13 Q. Does it matter how the blue line of code 14 might be inserted into Client B's version of the 15 Oracle file, a copy of the Oracle file?</p> <p>16 MR. POLITICO: Objection. Incomplete 17 hypothetical. And, Counsel, for clarity, are you 18 still asking her to ignore how it was inserted, per 19 your prior instruction?</p> <p>20 BY MR. VANDEVELDE:</p> <p>21 Q. I'm asking if it's relevant. And I'll just 22 give you an example. You can think of other ones 23 potentially.</p> <p>24 Does it matter if, for example, they copy 25 and paste the blue line of code from Client A's to</p>	<p style="text-align: right;">Page 131</p> <p>1 Client B with the certainty that that is the change 2 required, that that would be impermissible. 3 BY MR. VANDEVELDE: 4 Q. Can the engineer -- say the engineer 5 remembers the specific line of code he developed for 6 Client A, in Client A's systems, and Client B -- and 7 let's say there are other clients have the same 8 issue in the same Oracle file. 9 Can that engineer ever use that Rimini line 10 of code with those other customers? 11 MR. POLITICO: Objection. Calls for a legal 12 conclusion. Vague. Incomplete hypothetical. 13 THE WITNESS: My understanding of the 14 injunction is that it prohibits specifically the 15 preparation of a -- of a update or a derivative work 16 on one client's system and provision of that update 17 or derivative work to another client's system. 18 Now, in theory, I think it might be 19 possible say that the -- a very simplistic 20 situation, someone had transposed the digits of the 21 date. So instead of saying "2019," it said "2091." 22 It's certainly the case, I think, that a 23 developer might independently identify that problem 24 and make that change and test that change and 25 implement that fix, and the result could conceivably</p>
<p style="text-align: right;">Page 130</p> <p>1 Client B's systems or if they send the blue line of 2 code as a separate file from Client A to Rimini and 3 then Rimini to Client B? Does the mechanism of 4 transfer of that blue line of Rimini code, is that 5 material to your analysis of whether cross-use has 6 occurred when that blue line is inserted into 7 Client B's Oracle file?</p> <p>8 A. If the blue line is transferred to Client B 9 in any form, it would be my understanding that that 10 was not a permitted act. Now --</p> <p>11 Q. And if the engineer remembers the blue line 12 of code?</p> <p>13 MR. POLITICO: Objection. Incomplete 14 hypothetical.</p> <p>15 THE WITNESS: Again, that's a very strange 16 example, of a single line in a single program.</p> <p>17 Again, the circumstances matter if the 18 engineer remembered exactly the code he wrote, 19 exactly what he fixed, exactly where he fixed it, 20 and he relied on that very specific and detailed 21 knowledge to re-create that update for another 22 customer, then it would be my understanding that 23 because he's relying on the work done in the system 24 of Client A to identify the change and to implement 25 the change and to test the change, when he goes to</p>	<p style="text-align: right;">Page 132</p> <p>1 be, in a simple one-line fix like this, a line of 2 code that was identical because you're really just 3 fixing "2091" to "2019."</p> <p>4 So can the Rimini engineer reuse the line 5 of code? No, I don't believe they can because 6 that's transferring the update from one system to 7 the other. Could they independently go to a system 8 and independently develop a change that -- where 9 that one line in your example happened to look the 10 same, I think that that might -- that might be 11 possible and not be considered a cross-use.</p> <p>12 But it's a real corner case because we're 13 talking about updates that are many, many, many, 14 many lines in most cases. And this is sort of 15 taking an observed structure of that to -- of what 16 we see in the actual evidence to a very thin example 17 that we're using as a hypothetical.</p> <p>18 BY MR. VANDEVELDE:</p> <p>19 Q. So are you saying whether or not the 20 engineer can implement this line of code to 21 Client B's system depends on whether they remember 22 the line of code precisely? If they don't -- it's 23 fuzzy, maybe they can use it. If they remember it 24 precisely, they can't use it?</p> <p>25 MR. POLITICO: Objection. Misstates</p>

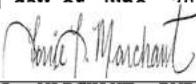
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<p>1 testimony.</p> <p>2 THE WITNESS: No, that's -- that's not what</p> <p>3 I'm saying, Counsel.</p> <p>4 I'm saying that if the engineer, whether</p> <p>5 the original engineer or another engineer, relies on</p> <p>6 the work done in Client A's system to understand</p> <p>7 what the problem is and where the fix needs to be</p> <p>8 and how the fix needs to be implemented, if they</p> <p>9 rely on that detailed knowledge of -- rely on that</p> <p>10 work that was done on Client A's system, to have the</p> <p>11 detailed knowledge of where to make the fix and they</p> <p>12 go make that fix somewhere else, then my</p> <p>13 understanding is that that is no longer general</p> <p>14 knowledge and know-how, but is very specific</p> <p>15 implementation for a very specific solution to a</p> <p>16 very specific bug, and that that is impermissible</p> <p>17 under the injunction, as I understand it.</p> <p>18 BY MR. VANDEVELDE:</p> <p>19 Q. So, yeah, let's actually talk about a bug.</p> <p>20 So let's say it was a bug. It was a severe</p> <p>21 bug in the Oracle file. And let's expand it to the</p> <p>22 Rimini solution is ten lines of code.</p> <p>23 So Rimini had to diagnose the bug. Had to,</p> <p>24 you know, look at where in the environment it was.</p> <p>25 It found -- the Rimini engineer found that it was in</p>	<p>1 licensee's PeopleSoft environment to</p> <p>2 develop or test software updates or</p> <p>3 modifications for the benefit of any</p> <p>4 other licensee."</p> <p>5 Under the language, as I understand it, in</p> <p>6 that paragraph of the injunction, Rimini would be</p> <p>7 prohibited from reusing that update that it</p> <p>8 developed on Client A's system for the benefit of</p> <p>9 any other customer.</p> <p>10 MR. VANDEVELDE: If we could mark as</p> <p>11 Exhibit 1890 [sic] Tab No. 11.</p> <p>12 (Marked for identification purposes,</p> <p>13 Exhibit 1860.)</p> <p>14 MR. VANDEVELDE: Oh, sorry. 1860.</p> <p>15 BY MR. VANDEVELDE:</p> <p>16 Q. So this is another diagram that will aid in</p> <p>17 me asking questions about hypothetical. This one is</p> <p>18 similar to the previous exhibit we looked at.</p> <p>19 Here, Client A and Client B each have a</p> <p>20 license to PeopleSoft. Each hosts its own</p> <p>21 development environment on its own systems. Each</p> <p>22 has the same Oracle file. Again, the red lines are</p> <p>23 Oracle code in that file.</p> <p>24 The Rimini engineer has already gone into</p> <p>25 Client A's environment and made an update by</p>
Page 134	Page 136
<p>1 the Oracle file. And the solution for the bug that</p> <p>2 the Rimini engineer develops is ten lines of code.</p> <p>3 It is 100 percent Rimini-written. It is not like,</p> <p>4 let alone identical, or substantially similar to any</p> <p>5 Oracle intellectual property.</p> <p>6 And then other clients, like Client B, have</p> <p>7 the same PeopleSoft version, the same Oracle file.</p> <p>8 Are experiencing the same severe bug. And the</p> <p>9 engineer -- can the engineer ever insert those ten</p> <p>10 lines of code to solve the bug for other customers?</p> <p>11 MR. POLITO: Objection. Asked and</p> <p>12 answered. Incomplete hypothetical. Calls for a</p> <p>13 legal conclusion. Compound. Vague.</p> <p>14 THE WITNESS: Under my understanding of the</p> <p>15 injunction -- and I'm looking now specifically at</p> <p>16 the paragraph numbered six, which says that:</p> <p>17 "Rimini Street shall not prepare" --</p> <p>18 I'm sorry -- "shall not reproduce,</p> <p>19 prepare derivative works from, or use</p> <p>20 PeopleSoft software or documentation on</p> <p>21 one licensee's computer system to</p> <p>22 support, troubleshoot, or perform</p> <p>23 development or testing for any other</p> <p>24 licensee, including specifically that</p> <p>25 Rimini Street shall not use a specific</p>	<p>1 creating a new file entirely of Rimini-written code.</p> <p>2 Again, assume that the blue Rimini code is unlike</p> <p>3 and not substantially similar to any Oracle IP.</p> <p>4 And so, again, let me just confirm. I</p> <p>5 think I know your answer, but the development</p> <p>6 environment on Client A's systems, that would now be</p> <p>7 a modified -- sorry, that would now be a derivative</p> <p>8 work with the inclusion of the blue Rimini code</p> <p>9 file; correct?</p> <p>10 MR. POLITO: Objection.</p> <p>11 THE WITNESS: Yes, it would.</p> <p>12 MR. POLITO: Sorry. Objection. Incomplete</p> <p>13 hypothetical. Object to the extent it calls for a</p> <p>14 legal conclusion.</p> <p>15 BY MR. VANDEVELDE:</p> <p>16 Q. You said, "Yes, it would"?</p> <p>17 A. That would be my understanding, that by</p> <p>18 modifying the PeopleSoft environment, that is --</p> <p>19 that modified environment is still a derivative work</p> <p>20 of the PeopleSoft environment.</p> <p>21 Q. Got it.</p> <p>22 But the red Oracle file in Client A's</p> <p>23 systems, that has not been modified. So it is not a</p> <p>24 derivative work; correct?</p> <p>25 A. It's still the original work if it's not</p>

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<p>1 been modified.</p> <p>2 Q. Okay. Just confirming.</p> <p>3 And, again, I think we have talked about</p> <p>4 this in connection with lines of code, but how about</p> <p>5 the Rimini code, the blue file, in isolation? Would</p> <p>6 you contend that that is a derivative work?</p> <p>7 And, again, given the assumption that I'm</p> <p>8 asking you to assume, which is that it is entirely</p> <p>9 Rimini-written code, that is not like or let alone</p> <p>10 identical to any Oracle IP. It is not substantially</p> <p>11 similar to any Oracle IP.</p> <p>12 MR. POLITO: Objection. Incomplete</p> <p>13 hypothetical. Compound. Object to the extent it</p> <p>14 calls for a legal conclusion.</p> <p>15 THE WITNESS: In this case, where we were</p> <p>16 talking about a specific file that satisfies some</p> <p>17 particular function, I think there is not a blanket</p> <p>18 yes/no answer. It depends what that Rimini code</p> <p>19 does and how it relates to the Oracle environment.</p> <p>20 So if that Rimini code is an extension or a</p> <p>21 transformation of that Oracle environment, it is</p> <p>22 still a -- my understanding would be that it is</p> <p>23 still a derivative work of that environment.</p> <p>24 But hypothetically, maybe that code doesn't</p> <p>25 even use any Oracle functionality. It doesn't even</p>	<p>1 identify the problem, and modification of Client A's</p> <p>2 environment via the addition of this file, and in</p> <p>3 subsequent testing of Client A's environment, you</p> <p>4 know, all things that would have to -- that you</p> <p>5 didn't mention in your hypothetical, but it would be</p> <p>6 a part of the actual occurrence of this kind of</p> <p>7 maintenance, then I think that reuse of that file on</p> <p>8 Customer B's environment would be a violation,</p> <p>9 again.</p> <p>10 BY MR. VANDEVELDE:</p> <p>11 Q. But Rimini would not be able to use this</p> <p>12 file with any other client even if they were</p> <p>13 experiencing the same bug or problem that Client A</p> <p>14 had experienced?</p> <p>15 MR. POLITO: Objection. Asked and</p> <p>16 answered. Object to the extent it calls for a legal</p> <p>17 conclusion. Vague. Incomplete hypothetical.</p> <p>18 THE WITNESS: And, again, yes, it is my</p> <p>19 opinion that it would be impermissible. And that's</p> <p>20 based on my understanding that the injunction says:</p> <p>21 "Rimini Street shall not use a</p> <p>22 specific licensee's PeopleSoft</p> <p>23 environment to develop or test software</p> <p>24 updates or modifications for the benefit</p> <p>25 of any other licensee."</p>
<p style="text-align: center;">Page 138</p> <p>1 really use the environment. It is only confined to</p> <p>2 using some capability of the underlying operating</p> <p>3 system, like creating a list of directories. Then,</p> <p>4 you know, there are situations that I could think my</p> <p>5 way into that says this program could be divorced</p> <p>6 from the environment and still used in the</p> <p>7 environment or used on the same environment and not</p> <p>8 be derivative work.</p> <p>9 But to the extent that that specific file</p> <p>10 serves as an extension to the PeopleSoft environment</p> <p>11 or a modifier or it would transform some aspect of</p> <p>12 that environment, then I would understand it to be a</p> <p>13 derivative work.</p> <p>14 BY MR. VANDEVELDE:</p> <p>15 Q. Now, would you contend it's a violation of</p> <p>16 the injunction for Rimini to create the same Rimini</p> <p>17 file with the blue code in Client B's environment if</p> <p>18 Client B is having the same issue and needs the same</p> <p>19 functionality or code?</p> <p>20 MR. POLITO: Objection. Incomplete</p> <p>21 hypothetical. Object to the extent it calls for a</p> <p>22 legal conclusion. Vague.</p> <p>23 THE WITNESS: Again, assuming that that</p> <p>24 Rimini code that was written by Rimini was written</p> <p>25 based on an analysis of Client A's environment to</p>	<p style="text-align: center;">Page 140</p> <p>1 BY MR. VANDEVELDE:</p> <p>2 Q. Does it matter where the blue Rimini file</p> <p>3 was first created? For example, if it was first</p> <p>4 created on Rimini's systems while solving the</p> <p>5 problem for Client A, does that affect your analysis</p> <p>6 at all?</p> <p>7 MR. POLITO: Objection. Incomplete</p> <p>8 hypothetical.</p> <p>9 THE WITNESS: Well, I would want to also to</p> <p>10 examine how it was developed and where it was</p> <p>11 tested. And so if it was developed under Rimini's</p> <p>12 system, but it was developed on Rimini's system</p> <p>13 based on an analysis of Client A's system to</p> <p>14 diagnose the problem and to determine what needed to</p> <p>15 be done as a resolution, and if it was tested on</p> <p>16 Customer A's system, then certainly it would be a</p> <p>17 violation, as I understand the injunction.</p> <p>18 BY MR. VANDEVELDE:</p> <p>19 Q. If Rimini transfers the blue file from</p> <p>20 Client A to Rimini's systems, and then Rimini</p> <p>21 transfers it again from Rimini's systems to</p> <p>22 Client B's systems, is any red Oracle code copied?</p> <p>23 MR. POLITO: Objection of the incomplete</p> <p>24 hypothetical.</p> <p>25 THE WITNESS: Okay. So here we're moving</p>

<p style="text-align: right;">Page 141</p> <p>1 away from cross-use to copying, and we're focusing 2 the same set of facts as in the prior hypothetical, 3 where the blue code is completely Rimini-authored 4 and looks nothing like any Oracle documentation or 5 Oracle code or other Oracle IP?</p> <p>6 BY MR. VANDEVELDE:</p> <p>7 Q. Correct.</p> <p>8 A. And you're just asking if Rimini -- if 9 Rimini created that code -- ask your question again 10 and given those hypothetical fact are established.</p> <p>11 Q. If Rimini transferred the blue file from 12 the Client A's systems to Rimini's systems and then 13 transferred again from Rimini's systems to 14 Client B's systems, is any red Oracle code copied?</p> <p>15 MR. POLITICO: Same objection.</p> <p>16 THE WITNESS: If just the blue code is 17 copied, and that code bears no relationship to the 18 Oracle IP, then Rimini is not copying Oracle code or 19 Oracle -- they're not copying the red code in your 20 example here.</p> <p>21 MR. VANDEVELDE: Got it.</p> <p>22 If we could mark as Exhibit 1861 -- and 23 this is the last one --</p> <p>24 MR. POLITICO: We've been going about an hour 25 and 15. Barb, are you okay for one more, or do you</p>	<p style="text-align: right;">Page 143</p> <p>1 Oracle file. It's the file with the red lines. 's 2 Oracle code in that file. The Rimini engineer has 3 already gone into Client A's environment and made an 4 update by deleting a line that had a bug.</p> <p>5 Just to confirm, I think you would agree 6 that the Oracle file on Client A's system with that 7 line deleted, that's a derivative work; correct?</p> <p>8 MR. POLITICO: Objection. Calls for a legal 9 conclusion.</p> <p>10 THE WITNESS: That would be my 11 understanding as a technical matter, that that 12 work -- that file is still derived from the 13 original, even though it has one less line.</p> <p>14 BY MR. VANDEVELDE:</p> <p>15 Q. And the development environment as a whole 16 with that modified file, that would be a derivative 17 work as you define and apply it in your analyses?</p> <p>18 MR. POLITICO: Same objection.</p> <p>19 THE WITNESS: Yes. As I understand it from 20 the technical perspective, having that one small 21 change, the environment is still a derived 22 environment from the original environment.</p> <p>23 BY MR. VANDEVELDE:</p> <p>24 Q. Okay. Would you contend that if the Rimini 25 engineer connected to Client B's system, who was</p>
<p style="text-align: right;">Page 142</p> <p>1 need a break now?</p> <p>2 THE WITNESS: I can do one more, and then 3 it would be nice to grab some lunch actually.</p> <p>4 MR. VANDEVELDE: Yeah. Let's do that. I 5 don't think it will be very long.</p> <p>6 So if we could mark as Exhibit 1861 Tab 12 7 and display it.</p> <p>8 (Marked for identification purposes, 9 Exhibit 1861.)</p> <p>10 THE WITNESS: And you said 1861, Counsel?</p> <p>11 BY MR. VANDEVELDE:</p> <p>12 Q. Yes.</p> <p>13 MR. POLITICO: I'm still waiting for file via 14 chat, please.</p> <p>15 MR. VANDEVELDE: Okay. It will come. Let 16 me know when you get it, John.</p> <p>17 MR. POLITICO: I have it.</p> <p>18 MR. VANDEVELDE: Yeah. Okay. Great.</p> <p>19 BY MR. VANDEVELDE:</p> <p>20 Q. So this is another diagram to aid in 21 questions I'll ask about hypothetical.</p> <p>22 In this one I would like you to assume that 23 Client A and Client B each have a licensed to 24 PeopleSoft. Each host its own development 25 environment on its own systems. Each has the same</p>	<p style="text-align: right;">Page 144</p> <p>1 having the same issue in the same file, the same 2 bug, and the Rimini engineer deleted that same line, 3 that that would be a violation of the injunction?</p> <p>4 MR. POLITICO: Objection. Incomplete 5 hypothetical. Object to the extent it calls for a 6 legal conclusion.</p> <p>7 THE WITNESS: Again, based on my 8 understanding, to the extent that -- and assuming 9 that the Rimini engineer had to have used 10 Customer A's PeopleSoft environment to develop this 11 fix, to identify the problem and to figure out one 12 line to remove and to test that fix.</p> <p>13 And so, again, it's my understanding that 14 Rimini's reuse of that fix for another customer, to 15 the benefit of that other customer, would -- would 16 violate the injunction.</p> <p>17 BY MR. VANDEVELDE:</p> <p>18 Q. Does it matter how many lines we're talking 19 about? For example, if it was ten deleted lines 20 instead of one deleted line?</p> <p>21 MR. POLITICO: Object. Calls for a legal 22 conclusion.</p> <p>23 THE WITNESS: As I sit here, I do not think 24 it would. The injunction language doesn't seem to 25 include any restrictions on the size of the update,</p>

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<p>1 but rather just says Rimini shall not use a specific 2 licensee's environment to development or test 3 software updates for modifications for the benefit 4 of any other licensee.</p> <p>5 BY MR. VANDEVELDE:</p> <p>6 Q. Was any Oracle -- strike that.</p> <p>7 Could the engineer -- do you contend it's a 8 violation of the injunction for the engineer to 9 create a dev instruction that says delete line, 10 let's say, 200 from file X?</p> <p>11 MR. POLITICO: Objection. Incomplete 12 hypothetical. Vague.</p> <p>13 THE WITNESS: Assuming that -- again, that 14 the development work to develop the fix was done on 15 Client A's system and tested there, and then the 16 Rimini engineer writes that dev spec, are you saying 17 is the creation of a document that says that a 18 violation, or were you asking is the use of that 19 document a violation?</p> <p>20 BY MR. VANDEVELDE:</p> <p>21 Q. To start with, just the creation of that 22 document.</p> <p>23 MR. POLITICO: Same objections.</p> <p>24 THE WITNESS: Yeah. It would depend in 25 part on what the document contains. But in this</p>	<p>1 and then it's got the name of the function in the 2 dev instruction? Is the creation of that dev 3 instruction, in your view, a violation of the 4 injunction?</p> <p>5 MR. POLITICO: Objection. Incomplete 6 hypothetical. Vague. Object to the extent it calls 7 for a legal conclusion.</p> <p>8 THE WITNESS: And, again, I'm going to read 9 a couple of things in here. Assuming, first of all, 10 that the dev instruction is created on Client A's 11 system and only ever used for Client A's system, and 12 it doesn't contain Oracle code, then the existence 13 of that document at that point does not constitute a 14 violation.</p> <p>15 It's when that document is used to 16 propagate that solution for a benefit of another 17 customer. And so we're not talking a copying issue 18 here. We're really just talking a cross-use issue.</p> <p>19 BY MR. VANDEVELDE:</p> <p>20 Q. How -- stepping aside from the 21 hypothetical -- and maybe just take this down. And 22 this will be the last short line of questioning. 23 Take down the exhibit.</p> <p>24 How can Rimini implement the same update 25 for multiple clients without, in your view,</p>
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<p>1 really narrow hypothetical, where it just instructs 2 someone to go to a particular file and delete a 3 particular line, and it hasn't been shared with 4 other customers or used on other customer 5 environments, and it doesn't actually contain the 6 line, it just says "go to this file, delete this 7 line," that is probably is not a violation of 8 anything.</p> <p>9 BY MR. VANDEVELDE:</p> <p>10 Q. But once that instructions is used with 11 Client B, you contend that's a violation of the 12 injunction?</p> <p>13 MR. POLITICO: Objection. Incomplete 14 hypothetical. Vague. Calls for a legal conclusion.</p> <p>15 THE WITNESS: Under my understanding of the 16 injunction, again, that Rimini engineer has now used 17 the Client A's specific environment to develop and 18 test software updates or modifications and is now 19 using that for the benefit of another client.</p> <p>20 So as the injunction is written, that is my 21 understanding, is that it would be a violation.</p> <p>22 BY MR. VANDEVELDE:</p> <p>23 Q. What if instead of saying -- the dev 24 instruction, instead of saying "delete line 200," it 25 said "delete the line where Function F is called,"</p>	<p>1 violating the injunction?</p> <p>2 MR. POLITICO: Objection. Vague. Incomplete 3 hypothetical. Object to the extent it calls for a 4 legal conclusion.</p> <p>5 THE WITNESS: I wasn't asked, Counsel, to 6 specifically identify or address how Rimini could 7 adjust its business practices to ensure that it 8 didn't fall afoul of the injunction. So I haven't 9 thought that hypothetical through with sufficient 10 diligence to be able to offer you any answer of how 11 they could do that.</p> <p>12 As I said in my other deposition, I think, 13 the first point would be perhaps to confer with 14 their counsel to get guidance on what actions are 15 permitted and what actions are not permitted. And 16 then to address their business process accordingly 17 in ways --</p> <p>18 BY MR. VANDEVELDE:</p> <p>19 Q. So Rimini -- if -- if Rimini identified -- 20 if Rimini has a Client A that has a very serious 21 bug, it's very serious, it causes a complete 22 malfunction. The PeopleSoft software is not able to 23 function properly. And it's a very simple fix. It 24 requires the deletion of one line in an Oracle file. 25 And 50 other clients have the same version of</p>

<p style="text-align: right;">Page 165</p> <p>1 another customer, I do contend that that violates 2 the cross-use.</p> <p>3 Q. Got it.</p> <p>4 And there's references to reducing testing 5 efforts or doing less testing. Is that relevant to 6 your analysis? Or if, for example, the testing 7 takes the same amount of time, but it uses a common 8 test plan, that would still be a violation of the 9 injunction in your view?</p> <p>10 MR. POLITO: Objection. Compound.</p> <p>11 THE WITNESS: Where that test plan is 12 developed and the use of a specific customer's 13 environment to verify the tests or to, you know, 14 capture information about expected results, 15 et cetera, then, yes, I think that would still 16 violate the injunction.</p> <p>17 BY MR. VANDEVELDE:</p> <p>18 Q. Regardless of -- if the tests for Client B, 19 for example, takes just as long as the initial 20 testing for Client A?</p> <p>21 MR. POLITO: Objection. Incomplete hypothetical.</p> <p>22 THE WITNESS: Yeah. You're not -- in 23 examining how long it takes to test, you're ignoring 24 the work that was done to develop the test plan as a</p>	<p style="text-align: right;">Page 167</p> <p>1 So -- and I'm just trying to confirm. So 2 even -- even if the test in the subsequent client 3 happens to take equally long or even longer, for 4 whatever reason, you would still contend that that's 5 improper cross-use, in violation of the injunction, 6 because of the knowledge of the first -- and work 7 that went into the testing the first client?</p> <p>8 A. Well --</p> <p>9 MR. POLITO: Objection. Pardon me.</p> <p>10 Objection. Incomplete hypothetical. Vague.</p> <p>11 THE WITNESS: Yeah, it's not specifically 12 because of the knowledge. It's because that way 13 that knowledge was acquired; that is to say, the 14 test plan was developed through the use the first 15 customer's environment.</p> <p>16 So that environment is being used to create 17 the testing document that's then being followed in 18 other environments to confirm that the software is 19 operating correctly.</p> <p>20 BY MR. VANDEVELDE:</p> <p>21 Q. And regardless of how little or long 22 subsequent testing takes, you would contend that's a 23 violation of the injunction?</p> <p>24 MR. POLITO: Objection. Asked and 25 answered. Incomplete hypothetical.</p>
<p style="text-align: right;">Page 166</p> <p>1 first case, and you're also ignoring, again, the 2 language of the injunction with respect to that 3 prohibition on: 4 "Rimini Street shall not use a 5 specific" -- 6 (Stenographer clarification.) 7 THE WITNESS: "Rimini Street shall not use 8 a specific licensee's PeopleSoft 9 environment to develop or test software 10 updates or modifications for the benefit of 11 another licensee." 12 So even just the act of testing that -- or 13 developing the fix in the first place and then 14 testing it so that you know this is the fix, when 15 you transport that knowledge to another environment, 16 you may be running through the same set of tests, 17 but you've already benefited from the fact of 18 developing that test -- or developing that test plan 19 of what to test and what not to test and how to test 20 it and what specific steps to take in the test. 21 And so you're still benefiting from having 22 developed that plan even if you simply re-execute 23 the plan in a new environment for a new customer.</p> <p>24 BY MR. VANDEVELDE:</p> <p>25 Q. Got it. Got it.</p>	<p style="text-align: right;">Page 168</p> <p>1 THE WITNESS: Well, to the extent that the 2 use of that test plan benefits the other customer, 3 that's really the key, is does the use of that test 4 plan benefit the other customer? Because then 5 you're piggybacking on the testing work that was 6 done in the first customer's environment.</p> <p>7 BY MR. VANDEVELDE:</p> <p>8 Q. When the engineer is testing an update for 9 Client A and there's no other clients, you would 10 agree that that testing is for the benefit of 11 Client A; correct?</p> <p>12 MR. POLITO: Objection. Incomplete hypothetical.</p> <p>13 THE WITNESS: So let me make sure I 14 understand your hypothetical. You're saying Rimini 15 only -- this is -- we're back to Rimini only has one 16 customer. This is Customer 0. And Rimini is 17 developing a test plan for some change that they 18 plan to make or had made to that system. And that's 19 the only customer that exists, and the plan is 20 developed right there on the customer's machine 21 and -- that's where we're at in your hypothetical; 22 right?</p> <p>23 BY MR. VANDEVELDE:</p> <p>24 Q. Yes.</p>

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<p>1 on that kind of system, it might be in the same 2 physical block of memory, but it is a different 3 chunk of memory that's allocated to the video 4 processor. And where a separate processing units is 5 completely separate.</p> <p>6 BY MR. VANDEVELDE:</p> <p>7 Q. Is that -- okay. And I'm going to use the 8 word "video buffer" -- 9 (Stenographer clarification.)</p> <p>10 BY MR. VANDEVELDE:</p> <p>11 Q. I'm going to use the phrase "video buffer." Is that display adapter memory continually 12 painting the pixels on the screen to display an 13 image?</p> <p>14 A. Typically it is, yes.</p> <p>15 Q. Many times a second?</p> <p>16 A. Again, typically it is 60 cycles or better 17 normally for ...</p> <p>18 MR. VANDEVELDE: Okay. Why don't we take a quick break. I think we're getting close.</p> <p>19 Does that work with you, Barbara and John?</p> <p>20 MR. POLITICO: Fine with me.</p> <p>21 MR. VANDEVELDE: Okay. Let's do ten more minutes. I think we're close. All right. Thank you.</p>	<p>1 agreed by the parties.</p> <p>2 THE VIDEOGRAPHER: Shall we go off the record now?</p> <p>3 MR. POLITICO: Yes, please.</p> <p>4 MR. VANDEVELDE: Thanks, everyone, for your help. Have a good evening.</p> <p>5 (Stenographer clarification.)</p> <p>6 THE VIDEOGRAPHER: The time is 5:54. This concludes the deposition. Thank you.</p> <p>7 THE STENOGRAPHER: Okay. I just need to check.</p> <p>8 Eric, you have a standing order.</p> <p>9 And, John, do you also need the e-mailed rough and a 2-day expedite also?</p> <p>10 MR. POLITICO: I'm sure we have a standing order. I probably don't have the authority to change it, so ...</p> <p>11 THE STENOGRAPHER: Okay. I don't see the standing order on here. I can double-check, but if it sounds right to you --</p> <p>12 MR. POLITICO: It sounds right to me. I can have our paralegal reach out to you with confirmation because she is the person in charge.</p> <p>13 THE STENOGRAPHER: Sounds good. All right.</p> <p>14 (Deposition concluded at 5:54 p.m.)</p>
<p>1 THE VIDEOGRAPHER: The time is 5:27. We are going off the record.</p> <p>2 (Recess taken, from 5:27 to 5:45.)</p> <p>3 THE VIDEOGRAPHER: The time is 5:45. We are back on the record.</p> <p>4 MR. VANDEVELDE: We have no further questions at this time.</p> <p>5 MR. POLITICO: All right. Give us five minutes.</p> <p>6 MR. VANDEVELDE: Okay.</p> <p>7 THE VIDEOGRAPHER: The time is 5:45, and we are going off the record.</p> <p>8 (Recess taken, from 5:45 to 5:53.)</p> <p>9 THE VIDEOGRAPHER: The time is 5:53. We are back on the record.</p> <p>10 MR. POLITICO: Great.</p> <p>11 So Oracle has no questions. Thanks very much.</p> <p>12 MR. VANDEVELDE: Great. Thanks all. Have a good evening and --</p> <p>13 THE VIDEOGRAPHER: The time is --</p> <p>14 (Simultaneous speakers - unclear.)</p> <p>15 MR. POLITICO: We have a protective order agreement in this case, so just -- this is highly confidential until it's redesignated/dedesigned as</p>	<p>1 REPORTER'S CERTIFICATE</p> <p>2 I, LORRIE L. MARCHANT, Certified Shorthand Reporter, Certificate No. 10523, for the State of California, hereby certify that BARBARA FREDERIKSEN-CROSS was by me duly sworn/affirmed to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place herein named; that the deposition is a true record of the witness's testimony as reported to the best of my ability by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed under my direction into typewriting by computer; that request [] was [X] was not made to read and correct said deposition.</p> <p>16 I further certify that I am not interested in the outcome of said action, nor connected with, nor related to any of the parties in said action, nor to their respective counsel.</p> <p>17 IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of June 2020.</p> <p>18 </p> <p>19 LORRIE L. MARCHANT, RMR, CRR, CCRR, CRC 20 Stenographic Certified Shorthand Reporter #10523</p>